

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DIAMOND LEASE (U.S.A.), INC.,

08 CIV. 92 (LAP)

Plaintiff,

-against-

**Affirmation of
Robert M. Marshall**

RICK HARTMAN,

Defendant.

-----X

ROBERT M. MARSHALL, an attorney duly licensed to practice law in this court, deposes and says under penalty of perjury:

1. I am an attorney at law of the State of New York and am the attorney for plaintiff in the above-entitled action. I am familiar with all the facts and circumstances in this action.
2. I make this affirmation, in support of Plaintiff's application for the entry of an Order to Show Cause for a default judgment against Defendant. If called as a witness I would testify competently as to the facts set forth herein.
3. This is an action to recover monies owed by Defendant to Plaintiff as specifically described in the Complaint and the Affidavit of Lorette Antola in support of the Default Judgment. The Defendant is not an infant, in the military, nor an incompetent person.
4. This action was commenced by the filing of a Complaint and the issuance of a Summons on January 4, 2008 a copy of said Summons and Complaint having been served upon the Defendant Rick Hartman on January 29, 2008, by personal service upon Brett Miller, Esq., Defendant's

designated agent for service of process in Indiana, a copy attached hereto as **Exhibit A**, and proof of such service having been filed in the Office of the Clerk. The Summons and Complaint reflected the index number and the date of issuance of same of January 4, 2008.

5. Defendant Rick Hartman has failed to file and serve an answer, a motion, or otherwise appear in this action.

6. This action seeks judgment for the liquidated amount of \$110,636.85, which is justly due and owing, and no part of which has been paid to date. The balance due and owing as of June 10, 2008 by Defendant, Rick Hartman is as follows: On the First Claim in the Complaint the principal sum of \$110,636.85, consisting of the unpaid balance of \$127,976.00, plus late charges owing from April 14, 2005 through December 17, 2007 of \$15,435.00, less the gross sales proceeds of \$50,000.00, the September 30 Specific Collateral sold at private sale on notice to RLH and Rick Hartman on December 17, 2007, plus repossession expenses of \$7,765.00, plus all continuing default interest from December 18, 2007 through June 10, 2008 of \$8,903.49 on the \$101,176.00 net amount due, plus process server/costs of collection of \$207.36, and \$350.00 Court complaint filing fee, due under the Lease and Guarantee.

7. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

8. An inquest is unnecessary because the default is for a "sum certain or for a sum which can by computation be made certain." CPLR 3215(a). This would apply to liquidated contract claims and to a claim on a money instrument. All of the claims in this matter satisfy the "sum certain" criterion, if any does not, the default application would have to be made to the court. Geer, Dubois & Co. v. O. M. Scott & Sons Co., 266 N.Y.S.2d 580 (1st Dept. 1966).

WHEREFORE, Plaintiff requests the entry of Default and the entry of the Judgment against Defendant Rick Hartman.

Dated: Nyack, New York
June 13, 2008

Marshall & Quentzel, L.L.C.

A handwritten signature in black ink, appearing to read "Robert M. Marshall", written over a horizontal line.

Robert M. Marshall, Esq. (RM-5641)

Attorneys for Plaintiff

15 North Mill Street

Nyack, N.Y. 10960

(888) 747-4300

EXHIBIT A

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

DIAMOND LEASE (U.S.A.), INC.,

Plaintiff

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

RICK HARTMAN

Defendant.

08 CV 00092

TO: (Name and address of defendant)

Rick Hartman
10614 DeAndrea Drive
Zionsville, Indiana, 46077

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

ROBERT M. MARSHALL - RM5641
Marshall & Quentzel, L.L.C.
Attorneys for Plaintiff
15 North Mill Street
Nyack, New York 10960
(888) 747-4300

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

JAN 04 2008

CLERK

(BY) DEPUTY CLERK

DATE

AO 440 (Rev. 10/93) Summons In a Civil Action -SDNY WEB 4/99

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹	DATE <u>1/29/2008</u>	
NAME OF SERVER (PRINT) <u>MARK W. MYERS</u>	TITLE <u>ASST. CHIEF, SOUTHPORT POLICE</u>	
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____		
<input checked="" type="checkbox"/> Other (specify): <u>Accepted by Brent M. Har, Atty. Agent for Rick L. Hartman.</u> <u>2700 Markers St. 10 W. Markers St. Indianapolis IN.</u>		
STATEMENT OF SERVICE FEES		
TRAVEL <u>244 mi @ .644 = 107.34</u>	SERVICES <u>\$100.00</u>	TOTAL <u>\$207.34</u>
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p>		
Executed on <u>1/29/2008</u> Date	<u>Mark W. Myers</u> Signature of Server <u>ASST. CHIEF, SOUTHPORT POLICE.</u> 1529 Ashwood Ct. GREENWOOD IN 46143 Address of Server	

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.